

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6134

PETITION OF SYED A. AND ARSHIYA B. MEER
(Hearing held May 31, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, July 14, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioners propose the construction of a second-story addition that requires a twenty-one (21) foot variance as it is within four (4) feet of the rear lot line. The required setback is twenty-five (25) feet.

Silvia Maceyras, an adjoining neighbor, and Louis Ortega, an architect, appeared in opposition to the variance request.

The subject property is Lot 16, Block B, Hilltop Estates Subdivision, located at 11008 Seven Hill Lane, Potomac, Maryland, 20854, in the R-90 Zone (Tax Account No. 00851774).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a second-story addition over an existing garage.
2. The petitioners testified that they have resided in their home since 1973 and that the proposed design of the addition will be attractive and would be the least expensive way to increase the home's living space.
3. The petitioners testified that their lot is unique because it has 30 foot slope down to Seven Locks Road and that their house sits at the top of the slope. The petitioners testified that the rear of the property faces Seven Locks Road, but has no access to the road. The petitioners testified that the entrance to their property is via an alcove from Seven Hill Lane and that they share this driveway with Lots 2 and 3.

4. The petitioners testified that the existing garage is located about 6 feet below grade and that the addition will not be very high because of the drop in the topography. In response to questions from the Board, the petitioners testified that the existing garage received a variance in 1989 to be constructed and that their lot is 12,439 square feet. The petitioners testified that a one-story addition was added in the southwest section of the lot about a year ago. See Exhibits 4(a) [site plan] and 7 [Opinion of the Board].
5. Ms. Maceyra testified that her lot backs up to the existing garage and that currently a fence provides screening for the structure. Ms. Maceyra testified that the proposed addition would be a 10 foot wall that would be very visible from her property. Mr. Ortega testified that the proposed addition would be totally out-of-scale and character with the neighborhood. See Exhibits 10(a) and 10(b) [photographs].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the petitioners' lot has a distinctive slope, the sloping topography has not prevented the development of the lot. The Board finds that any "uniqueness" or "peculiarity" caused by such a slope does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance. The Board notes that the property significantly exceeds the minimum lot size for the zone and that new construction can and has been accommodated on the property without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of twenty-one (21) feet from the required twenty-five (25) foot rear lot line setback for the construction of a second-story is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 9th day of July, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.